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No. 830

In the Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND HUGH L. RUTLEDGE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A 21–31) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on March 3, 1960 (3 R. 36–37).[1] The petition for a writ of certiorari was filed on April 1, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] The record consists of three volumes, herein referred to as "1 R.", "2 R.", and "3 R." respectively. It further includes three additional "Parts", herein referred to as "4 R.", "5 R." and "6 R." respectively.

QUESTIONS PRESENTED

1. Whether the International Brotherhood of Teamsters was guilty of criminal contempt of orders of the United States District Court by reason of the actions of its agent, Secretary-Treasurer Rutledge.

2. Whether the instructions to the jury were proper.

3. Whether notice of the rule to show cause in the contempt proceeding was sufficiently served upon the International by service upon Rutledge.

4. Whether Rutledge was entitled to ignore the temporary injunction orders of the United States District Court upon his own determination that they did not conflict with his boycotting activities and that they were invalid, without seeking modification of the court's orders.

STATUTE AND RULE INVOLVED

Act of March 23, 1932, c. 90, Sec. 6, 47 Stat. 71 (29 U.S.C. 106):

> *Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents.*
>
> No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Rule 42(b), F.R. Crim. P.:

> A criminal contempt except as provided in subdivision (a) of this rule [Summary Disposition] shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. * * *

STATEMENT

Petitioners seek review of the judgment of the United States Court of Appeals for the Fourth Circuit (3 R. 36–37) affirming judgments of the District Court for the Western District of North Carolina, which, upon the verdict of a jury, adjudged petitioners guilty of contempt of court (2 R. 361). The International Brotherhood of Teamsters was fined $50,000 (2 R. 361).[2]

1. In March or April 1959, Overnite Transportation Company received a telegram signed "INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS LOCAL UNION #55 HUGH RUTLEDGE SECRETARY-TREASURER", claiming representation of Overnite's employees at its Asheville terminal and requesting recognition and a meet-

[2] The court of appeals remanded the case, as to Rutledge, for resentencing, since he had received both a prison sentence and a fine (Pet. App. A 31).

ing on April 3, 1959 (2 R. 284; 4 R. 30). Upon Overnite's failure to meet with Rutledge, some of Overnite's drivers, after May 19, 1959, left their employment (2 R. 285). Overnite, which continued to operate, encountered refusals to handle its interconnecting freight by the four carriers of the Asheville terminal (2 R. 285–286). A number of additional carriers, preponderantly employers of members of International's locals in North Carolina, South Carolina, Tennessee, Virginia, and Georgia, *i.e.*, locals Nos. 728, 71, 391, 61, 509, and 592, also refused to handle Overnite freight (2 R. 288–294).

On June 4, 1959, upon complaint of Overnite in the United States District Court, temporary injunction orders were entered against the four connecting carriers at Asheville prohibiting those carriers, their officers and employees, from refusing to handle Overnite's freight, pending determination of the merits (2 R. 78–82).

Petitioner Rutledge attended the court's hearing on Overnite's complaint against the four interconnecting carriers and was present when the judge announced that the injunction orders would be entered. He made informal objection to the judge as to "persons who had been laid off" but was advised by the judge that a ruling could be made only on what was before him and that petitioner would have to file proper proceedings (2 R. 68–71, 83–85). Neither Rutledge nor International instituted proceedings to intervene and obtain exemption from the terms of the orders

for any International members employed by the interconnecting carriers.

2. On June 8, 1959, petitioner Rutledge came to the garage of one of the enjoined connecting carriers. The manager, observing some of his men on a picket line, told Rutledge that the injunction order would have to be followed. Rutledge thereupon stated, in the presence of some employees, that the order "doesn't mean anything at all" (2 R. 106–107). On the next day, Rutledge borrowed a copy of the order from the manager, and accused the manager of attempting to break the strike at Overnite (2 R. 109–111.) On June 12, 1959, Rutledge delivered to the manager of another of the enjoined connecting carriers a letter stating that, because of the labor dispute at Overnite, the members "have advised us" that "they" intend to exercise rights under Article XI of the Southern Conference Local Freight Forwarding, Pickup and Delivery Agreement to refuse to handle unfair goods and to refuse to cross any picket line (2 R. 220–222). An identical form of letter was mailed to another of the interconnecting carriers on June 17 (2 R. 208–209). Letters were personally delivered by Rutledge to the managers of the two remaining enjoined carriers on June 11 and June 12.[3] Rutledge stated to one of the managers, at the time of delivery, that he "would take care of the court order," and that if the manager obeyed the court order, instead of the let-

[3] Testimony of truck drivers and of terminal personnel indicated that the refusals to handle goods was initiated by petitioner Rutledge rather than the members (2 R. 178–180, 186–187, 212–213, 222–223). Petitioners offered no evidence of members themselves initiating the refusals to handle freight.

ter, the carrier's men would be called out on strike (2 R. 112–113, 194–195).[4]

After the delivery or mailing of the four letters, employees of the connecting carriers, who had theretofore handled Overnite cargo, refused to handle the cargo (2 R. 112, 115–123, 133–135, 167).

Petitioner Rutledge, on June 19, inquired of a truck driver for one of the interconnecting carriers whether he had any Overnite freight on his trailer, and whether he knew that he was not supposed to haul such freight. When the driver referred to the court's injunction order posted in the terminal, Rutledge said, "Oh, to Hell with that. That's no good. That Judge had no right to issue that restraining order, and I don't think it was issued by the Judge because it wasn't served by a U.S. Deputy Marshall. The Judge told me he was going to put someone in jail, but I don't think it will be me" (2 R. 177–180). On another occasion, petitioner Rutledge followed an Overnite truck and cursed its driver (2 R. 242–244, 246–250, 253–254). On a number of occasions, Rutledge was observed at the picket lines of terminals of the interconnecting carriers (2 R. 93–94, 124–126, 128, 155, 174–175, 246–247, 307–308).

3. Under the constitution of the International (in evidence as Gov. Ex. 5, 4 R. 32), the International has extensive and detailed control of the local union's activities, as set forth by the court below (Pet. App. A 23–26; and see 4 R. 32 and *infra*, pp. 8–10). Among other things, a local is prohibited from engaging in a

[4] Two of the original letters were not put in evidence by reason of their prior delivery for use in other proceedings (2 R. 114, 195).

boycott without prior notice to the International, which retains the right to prevent or modify the proposed action of the local (4 R. 32, XII 1(c)).

Specific provision of the constitution further empowers International to appoint a trustee to take "full charge of the affairs of the local union," with authority to remove and appoint new officers, the trustee being responsible directly to the General President of the International (2 R. 103–104, 4 R. 32, VI 5(b)). Such a trustee, Richard Bell of Washington, D.C., was appointed for Local 55 at a time prior to June 29, 1959 (2 R. 36–37, 99). The exact date does not appear in the record, but petitioners at no time intimated or proffered evidence that the taking-over was not in advance of the actions and events here involved. Petitioner Rutledge was appointed by the trustee to serve as Secretary-Treasurer of Local 55, responsible only to the trustee and not subject to control of the membership (2 R. 37–38, 100–103).

4. The trial judge, in his instructions, placed before the jury the position of both the government and petitioners on the issue of knowledge and wilfulness of petitioner Rutledge (2 R. 339–341).

As to the International, the instructions included the full language requested by petitioners that a finding of guilt as to petitioner Rutledge "would not require a verdict of 'Guilty' as to the International" (2 R. 348–349); that, before the International could be found guilty, the jury must be convinced beyond a reasonable doubt that the International knew of the terms of the injunction order (2 R. 349) and "wil-

fully and intentionally authorized, instructed or caused Hugh Rutledge to commit the acts charged * * * causing or seeking to cause persons found by this court's order to violate that order" (2 R. 349).

No objection was made to the instructions and no further requests for instructions were made (2 R. 351–352).

ARGUMENT

1. Petitioners' contentions with respect to the liability of the International seek, in essence, review by this Court of the sufficiency of the evidence. The trial judge instructed the jury, in the language submitted by petitioners themselves, that the International Brotherhood of Teamsters could not be found guilty of violating the injunction order of the district court unless the jury was convinced beyond a reasonable doubt that the International actually knew of the order and wilfully and intentionally authorized or caused petitioner Rutledge to commit the stated violations (*supra*, pp. 7–8). The issue as to Rutledge's status with the International is also one of fact. Here, the International itself had taken over the functions ordinarily exercised through a local unit of the International. It had invoked the extraordinary power to appoint a trustee, the trustee being directly responsible to the president of the International. It was this trustee (not local membership) who appointed Rutledge Secretary-Treasurer, and it was to this trustee for the International that Rutledge was responsible.[8]

[8] As noted, *supra*, petitioners have not claimed that the trusteeship did not occur before the events in question. Petitioners

Moreover, the International's constitution, which is extensively discussed in the opinion below (Pet. App. A 23–26), would have sufficed in itself to show that it was the International that acted here, and not an independent "affiliate", as petitioners suggest. Under the constitution of this closely-knit union, there is no loosely affiliated group of autonomous, independent unions under the mere coordination of an "international" body. Rather, there is a single controlling union; the locals are in essence mere administrative subdivisions. Thus, membership is in the international union, the oath being as a member of the International (2 R. 45–46). Acceptance of a member from another area holding a valid transfer card is mandatory (4 R. 32, XVII).[6] The International can expel or suspend members for any of a long list of causes, but a local's expulsion or suspension of a member

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likewise make no challenge to the accuracy of the facts concerning the trusteeship and Rutledge's appointment by the trustee, and they proffered no evidence in contravention. In their Statement, they argue (Pet. 7, fn. 2) that the assertions of Rutledge setting forth these facts were admitted "solely" because of establishment of Rutledge's agency by means of International's constitution. This contention is not borne out by petitioners' citations to the record. The position of the government and of the court below was that Rutledge's agency is established by the entire record and not alone by the general provisions of International's constitution (Pet. App. A 29; 2 R. 103–105). Rutledge's statements were not simply statements of an agent concerning his agency but were competent statements, by the conceded custodian of the records of an unincorporated association (4 R. 28–29), as to the officers.

[6] The member's identification card (in evidence as Gov. Ex. 7) is in the name of the International, the local number being in a subordinate position, along with the address and the like (4 R. 36).

is subject to International's review (4 R. 32, XVIII, 6 and 9). The International's constitution prescribes the time and manner of local meetings, the duties of officers, and the procedures whereby International can suspend, remove, or discipline the so-called local officers (4 R. 32, XXI–XXIII). The Secretary-Treasurer, as the officer principally in charge of financial affairs, reports and accounts to the International (4 R. 32, XXII, 9).[1] Negotiation of a collective bargaining agreement is at the local level, but the terms must be approved by International (4 R. 32, XII, 11(b)–(d)). The International, moreover, can compel acceptance of an offer to arbitrate a dispute (4 R. 32, VI, 3). And, particularly pertinent here, a strike, boycott, or lawsuit may not be undertaken without prior notice to the International, which can prevent or modify the proposed action (4 R. 32, XII, 1(c)).

In this case, the local was deprived of all appearance of local control, when, under the constitution, the president of the International appointed a trustee to take over the local activities. This trustee took over all funds, books and properties, and appointed officers. The trustee, in turn, reported to, and was under the supervision of, the president of the International (*supra*, p. 7). There was no longer even the semblance of any autonomous local unit intervening in the chain of authority between the International and Rutledge; Rutledge was the direct appointee of the International's trustee.

[1] Even the charter and its frame remain the property of the International (4 R. 32, VII, 3).

Moreover, there was further substantial evidence of Rutledge's authority to act for the International. The refusal of teamster unions to handle Overnite's interconnecting freight at Asheville was not an isolated action to be attributed to Rutledge as an individual, for six Teamster unions, over a five-state area, took the same action.[8] The jury was entitled to conclude that, when the interferences with Overnite freight were so extended and involved so many of the local subdivisions, the International was deeply involved.[9]

Petitioner raises in this Court an issue that was not seasonably raised below, *i.e.*, a contention that under Section 6 of the Norris-LaGuardia Act (*supra*, p. 2) no organization "participating or interested in a labor dispute" shall be held responsible for the unlawful acts of "individual officers, members or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such

[8] Petitioners are accordingly in error in repeatedly seeking to characterize Rutledge's authority as established in the evidence "solely" by the International's constitution, "without any proof of actual knowledge, authorization * * * or participation" (Pet. 2, 5–6, 7, 8).

[9] The foregoing factual situation is far removed from the situations as to which petitioners cite supposedly conflicting decisions. The *Coronado* cases, 259 U.S. 344, and 268 U.S. 295, extensively quoted by petitioners (Pet. 9–10), not only involved no action, as here, by international officers taking over a local union, but involved a type of constitution under which, as specifically pointed out by this Court (259 U.S. at 384–385; 268 U.S. at 299–300, 304), the local districts were permitted to order local strikes "on their own responsibility," as contrasted with the instant constitution which prohibits such independence of action (*supra*, pp. 6–7).

acts after actual knowledge thereof." Although we do not agree that the Act is applicable to the instant situation,[10] the short answer is that there was clear proof of actual participation in, and ratification of, the acts complained of, and that the proof was presented to the jury under instructions (see *infra*, pp. 13–14) that required a finding of direct complicity by the International. As this Court stated in the very case relied upon by petitioners, *United Brotherhood of Carpenters* v. *United States*, 330 U.S. 395, 409–410:

> There is no implication in what we have said that an association or organization in circumstances covered by § 6 must give explicit authority to its officers or agents to violate in a labor controversy the Sherman Act or any other law or to give antecedent approval to any act that its officers may do. Certainly an association or organization cannot escape responsibility by standing orders disavowing authority on the part of its officers to make any agreements in violation of the Sherman Act and disclaiming union responsibility for such agreements. Facile arrangements do not create immunity from the act, whether they are made by em-

[10] The enactment does not mean that an organization involved in a labor dispute is to be the beneficiary, *during that period of time*, of this rule of proof as to any and every unlawful act of its officers and agents irrespective of whether the act was committed in the dispute itself. In the instant case, the offense for which the International was held responsible was an offense against the United States District Court. The International had not chosen to intervene in the district court proceedings, and those proceedings remained exclusively proceedings between Overnite and four interconnecting carriers as to obligations of common carriers with respect to interstate commerce.

ployee or by employer groups. The conditions of liability under § 6 are the same in the case of each. The grant of authority to an officer of a union to negotiate agreements with employers regarding hours, wages, and working conditions may well be sufficient to make the union liable. An illustrative but nonrestrictive example might be where there was knowing participation by the union in the operation of the illegal agreement after its execution. And the custom or traditional practice of a particular union can also be a source of actual authorization of an officer to act for and bind the union.

In this case the evidence disclosed not only the necessity for International approval of a boycott; it also showed activities beyond the local area which could have resulted only from action by the International.

The Norris-LaGuardia requirement of "clear" proof, if applicable here, was fully satisfied. Moreover, no evidence was proffered by petitioners to counter the conclusion that the widespread boycott necessarily reflected calculated decisions taken by the International.

2. What we have set forth above disposes of petitioners' belated complaint concerning the instructions to the jury. At the close of the trial, the judge gave the instructions requested by petitioners themselves, including a specific charge that a verdict of guilt as to Rutledge would *not* require a verdict of guilt as to the International; that, before the International could be found guilty, the jury must be convinced beyond a reasonable doubt that the Inter-

national "knew" of the terms of the injunction order and "wilfully and intentionally authorized, instructed or caused Hugh Rutledge to commit the acts charged" (2 R. 348–349). Petitioners did not object to the instructions or ask further clarification of comments made earlier in the trial. Indeed, when the trial judge inquired, at the close of all the instructions, whether there were any further requests, petitioners replied in the negative (2 R. 351–352).

Petitioners' assumption that the language of the Norris-La Guardia Act must be embodied word for word in the instructions to the jury is not supported by *United Brotherhood of Carpenters* v. *United States*, 330 U.S. 395. In the *Carpenters* case, erroneous instructions had been given (330 U.S. at 409). In the context of that situation, this Court pointed out that the failure to give clarifying language was error. Here, however, the language of the final instructions clearly and forcefully—in petitioners' own wording—told the jury what it had to find in order to find guilt.

3. Petitioners allege a conflict of authority on the question whether the International was served with proper notice of the contempt charge by service upon Secretary-Treasurer Rutledge.[11] However, the existence of an agency relationship is a question of fact. As the court below recognized, if a local is truly autonomous, service upon the local officer is not service

[11] Rule 42(b) F.R. Crim. P. (*supra*, p. 3) provides: "A criminal contempt except as provided in subdivision (a) of this rule [Summary Disposition] shall be prosecuted on notice. * * * The notice shall be given orally by the judge * * * or, on application of the United States Attorney * * * by an order to show cause or an order of arrest. * * *"

upon the International (Pet. App. A 27–28, footnotes 4 and 5).[12] On the other hand, "[w]hen the International is extensively engaged in activity within the district, it should be amenable to process there, and such process is appropriately served upon the agent who has general charge and direction of the activity" (*id.* 29).

4. Petitioners contend that petitioner Rutledge was not in contempt in urging exercise of purported union rights as to "hot cargo" under agreements with interconnecting carriers.[13] But any argument as to union rights under the agreements should have been made, and lawfully tested, by an orderly proceeding in the district court requesting a modification of the injunction orders.[14]

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[12] The court below specifically adverted to *Morgan Drive Away Inc.* v. *International Brotherhood of Teamsters, et al.*, 268 F. 2d 871 (C.A. 7), upon which petitioners rely, stating (Pet. App. A 28, fn. 4), "Whether, in light of the *other evidence* presented in Morgan Drive Away, we might have been constrained to affirm a finding by the District Court that there was no agency relationship, we need not consider." (Emphasis added.)

[13] At least, one of the interconnecting carriers did not agree that such clauses were intended to be effective as against a court order of the instant type (2 R. 199).

[14] Petitioners' reliance on *Chase National Bank* v. *City of Norwalk*, 291 U.S. 431, and *Regal Knitwear Co.* v. *NLRB*, 324 U.S. 9, is misplaced. There the complaint was with respect to the court's inclusion of persons in the injunction order who were not parties and who had not, as here, injected themselves into the case by actual participation in violation of the order. As observed in *Regal Knitwear Co.* v. *NLRB* (at p. 15), persons who are concerned with the question of whether their conduct will involve participation in a contempt of an order can protect themselves by petitioning the court "for a modification or construction of the order." And see Rule 65(d), F.R. Civ. P.

The fact that petitioners were not parties to the proceeding in which the temporary injunctions were issued did not give them carte blanche to force the interconnecting carriers to do exactly what the district court had forbidden. Nor is there any merit in the argument that the injunction orders, if issued directly against petitioners, might have involved conflict with the Norris-LaGuardia Act. The answer to both arguments is the same. Petitioners should have presented their contentions immediately to the district court by a request for modification of the injunction orders, instead of taking the law into their own hands, as they did even beyond the time when contempt proceedings had been instituted. See 2 R. 173–175, 180, 267–268; 4 R. 5. As this Court observed in *United States* v. *United Mine Workers of America*, 330 U.S. 258, 293:

> In the case before us, the District Court had power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable in criminal contempt.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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